Docket No.: 080398.P109

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Jeffrey M. Claar Application No.: 08/936,708 Filed: September 24, 1997 For: Method and Apparatus for Providing a Graphical User Interface for a Player/Recorder System	Examiner: Laura A. Grier Art Group: 2644

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is an appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner of Group 2644 dated August 11, 2004 in which claims 23-30 and 32-49 in the above-identified application were finally rejected. This Appeal Brief is hereby submitted pursuant to 37 C.F.R. § 41.37(a). Concurrently herewith, Appellants submit an Office Action canceling claims 30 and 40-46 without prejudice.

Appellants also submit herewith our check number 31692 in the amount of $620 ($500 + $120 for 1 month extension of time) to cover the cost of filing the opening brief as required by 37 C.F.R. § 1.17(f). Please charge any additional fees or credit any overpayment to our deposit Account No. 02-2666. A duplicate copy of the Fee Transmittal is enclosed for this purpose.

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I. REAL PARTY IN INTEREST

The real party in interest is the assignees, Sony Paramount Entertainment of Culver, California and Sony Corporation of Tokyo, Japan.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to the appellants, the appellants' legal representative, or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 23-30 and 32-49 of the present application are pending and remain rejected. Appellants hereby appeal the rejection of claims 23-30, 32-39 and 47-49.

IV. STATUS OF AMENDMENTS

Appellants filed an amendment on November 11, 2004, in response to a Final Office Action issued by the Examiner on August 11, 2004. In response to the November 11th amendment, the Examiner issued an Advisory Action on December 1, 2004. Appellants filed a Notice of Appeal from the Advisory Action on January 3, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

1. Independent claims 23, 32, and 47:

Embodiments of the invention relate to a graphical user interface, a method of operation and machine-readable medium with stored data, all of which are adapted for a player/recorder system.[1] Each of these inventive aspects is configured to provide central and simultaneous control of one or more tracks of audio processing module(s).[2]

[1] See preamble of claims 23, 32 and 47 of the subject application.
[2] See Page 1, lines 4-6 of the subject application.

With respect to claim 23, the graphical user interface (GUI) comprises a first display portion (510), a second display portion (520) and a third display portion (530).[3] As claimed, the "third display portion" is equivalent to the first display portion (510) described in the specification, namely the portion adapted to display and control all *player tracks* loaded (associated with one or more audio processing modules).[4] Similarly, as claimed, the "first display portion" is equivalent to the third display portion (530) described in the specification, namely the portion adapted to display and control all loaded *recorder tracks*, namely the recorder tracks associated with the one or more audio processing modules.[5] The difference between a recorder track and a player track is that a record operation *cannot* be performed on a player track.[6] The grouping of recorder and player tracks on separate display portions provides a mechanism to distinguish one track type from another.[7]

With respect to claim 32, the method of operation is directed to the generation of the GUI set forth in claim 23. Claim 47 is directed to a machine-readable medium having stored data to generate the GUI generally set forth in claim 23, with the exception that the third display portion is displayed with the first display portion concurrently, not identifying whether the second display portion is concurrently displayed with the third display portion.[8] The above-identified limitations of claim 23 are similarly found in independent claims 32 and 47.

According to independent claims 23, 32 and 47, both the first and third display portions comprise a plurality of control boxes each adapted to control at least one player/recorder track. The control boxes illustrated in the GUI feature a number of additional boxes and buttons that, when selected, support different functionality.

2. Dependent claims 25 and 34:

[3] See Figure 5; page 10, lines 19-21 of the subject application.
[4] Emphasis added; see claim 23 and page 10, lines 21-22 of the subject application.
[5] Emphasis added; see claim 23 and page 10, lines 24-25 of the subject application.
[6] Emphasis added; see page 10, line 24 to page 11, line 1 of the subject application.
[7] See page 11, lines 2-3 of the subject application.
[8] See claim 47 of the subject application.

Embodiments of the invention relate to a record button, notably illustrated in the third display portion.[9] The record button for each specific track of a plurality of recorder tracks is selectable and that, when selected, a record command is transmitted.[10]

3. Dependent claim 28:

An embodiment of the invention relates to a selection button adapted to mute *at least two player tracks* of a plurality of player tracks after commencement of playback.[11] The plurality of player tracks are those tracks referenced in the first display portion of independent claims 23 and 32.

4. Dependent claim 27:

An embodiment of the invention relates to a scroll bar that provides access to the plurality of control boxes that are not visible on a screen displaying the GUI.[12] adapted to mute *at least two player tracks* of a plurality of player tracks after commencement of playback.[13] The plurality of player tracks are those tracks referenced in the first display portion of independent claims 23 and 32.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 23-26, 28-29, 32-40 and 47-49 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,160,123 issued to Arnold et al. ("Arnold").
2. Claims 27, 30 and 41-46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Arnold.

VII. ARGUMENTS

A. Claims 23-26, 28-29, 32-40 and 47-49 Are Not Anticipated by Arnold.

1. CLAIMS 23-24, 26, 29, 32-33, 35-40 AND 47-49

[9] See claim 25 of the subject application.
[10] See claims 25 and 34 of the subject application.
[11] See claim 28 of the subject application.
[12] See scroll bar illustrated in second display portion (520) of Figure 4, which is similar to scroll bar 430 of Figure 4.
[13] See claim 28 of the subject application.

Claims 23-24, 26, 29, 32-33, 35-40 and 47-49 stand or fall together. Claim 23 is a representative claim. Herein, the Examiner rejected 23-24, 26, 29, 32-33, 35-40 and 47-49 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,160,123 issued to Arnold ("Arnold"). Appellants respectfully traverse the rejection and contend that the Examiner has not met the burden of establishing a *prima facie* case of anticipation.

As the Examiner is aware, to anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."[14] "The identical invention must be shown in as complete detail as is contained in the...claim."[15]

Arnold allegedly discloses the concurrent display of a first, second and third display portions.[16] The first display portion is allegedly taught by a display of a plurality of tracks for a single instrument (428/430) for the record screen (398).[17] A "clear all" (454) button of the record screen (398) allegedly constitutes the second display portion while "a display of various control buttons used in the recording screen mode which indicates [the] a plurality of recorder control boxes to [a] control a plurality of recorder tracks" allegedly indicates the third display portion.[18]

Appellants respectfully submit that Arnold does not disclose, either expressly or inherently, a first display portion including a plurality of control boxes each corresponding to one or more of a plurality of *player* tracks, which is displayed concurrently with a third display portion including control boxes adapted to control one or more of a plurality of *recorder* tracks. As explicitly described in Arnold, the tracks associated with the single instrument (428/430) can be marked for recording, and when so, the current single instrument sound selected on the single instrument selection screen (200) is heard and is recorded onto the track.[19] Hence, these tracks associated with the single instrument (428/430) must be *recorder tracks*, which is in contrast to claim 23 in which first display portion having a plurality of control boxes each corresponding to one or more of a plurality

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[14] Vergegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987).
[15] Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989).
[16] See Figure 17 & column 22, line 28 to column 23, line 55 of Arnold.
[17] See Figure 17 of Arnold.
[18] See Figure 17 of Arnold.
[19] See colimn 22, line 66 to column 23, line 2 of Arnold.

of *player tracks*.[20] As explicitly set forth in the specification of the subject application, a record operation cannot be performed on a "player track," but rather is performed on a recorder track.[21] Hence, the single instrument track display (428/430) of Arnold does not teach, and in fact, teaches away from the display of player tracks as claimed.

Therefore, Appellants believe that independent claims 23, 32 and 47 and their respective dependent claims are distinguishable over Arnold and the cited prior art references.

2. CLAIMS 25 AND 34

Claims 25 and 34 stand or fall together. Claim 25 is a representative claim. Herein, the Examiner rejected claims 25 and 34 under 35 U.S.C. §102(e) as being anticipated by Arnold. Appellants respectfully traverse the rejection and again contend that the Examiner has not met the burden of establishing a *prima facie* case of anticipation.

Arnold allegedly discloses a single recording button (424) for transmitting a recording command.[22] In contrast, claim 25 is directed to a third display portion that comprises a record button *for each specific track of the plurality of recorder tracks*.[23] Arnold does not disclose, either expressly or inherently, the third display portion featuring multiple record buttons for each specific track as claimed.

Therefore, Appellants believe that dependent claims 25 and 34 are distinguishable over Arnold and the cited prior art references.

3. CLAIM 28

Claim 28 stands or falls on its own. Herein, the Examiner rejected claim 28 under 35 U.S.C. §102(e) as being anticipated by Arnold. Appellants respectfully traverse the rejection and contend that the Examiner has not met the burden of establishing a *prima facie* case of anticipation.

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[20] Emphasis added.
[21] See page 10, lines 24-25 of the Specification.
[22] See column 22, lines 28-44 of Arnold.
[23] Emphasis added.

Arnold allegedly discloses the "capability of global command to multiple devices with multiple tracks which are indicative of play and stop and mute."[24] It is noted that the keyboard selection screen (246) features a mute control icon (256) for each musical instrument layer. In contrast, claim 28 is directed to one of the selection buttons displayed in the first display portion and mutes *at least two player tracks*.[25] As previously mentioned, these player tracks are those tracks which cannot be recorded. Arnold does not disclose, either expressly or inherently, muting of multiple tracks through a selection button as claimed.

Therefore, Appellants believe that dependent claim 28 is distinguishable over Arnold and the cited prior art references.

B. Claim 27 Is Not Rendered Obvious Over Arnold

The Examiner rejected claim 27 under 35 U.S.C. §103(a) as being unpatentable over Arnold. Appellants respectfully traverse the rejection and contend that the Examiner has not met the burden of establishing a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.[26] Appellants respectfully contend that at least the prior art reference does not teach or suggest all of the claim limitations.

It is alleged that Arnold discloses a scroll bar, which has not been properly identified by the Examiner and is presumably the time bar (406) set forth in Figure 17. The time bar (406) can move the current position marker (404) by, for example, a 100^{th} of a beat. Hence, the time bar (406) is configured as a scroll bar designed to identify the position in time of the audio playback in contrast with the scroll bar of the claimed invention that "provides access to the plurality of control boxes [of the first display

[24] See Figure 11 of Arnold
[25] Emphasis added.
[26] See MPEP §2143.

portion]... that are not visible on a screen displaying the GUI." In summary, Arnold does not disclose or even suggest the scroll bar as claimed.

Accordingly, claim 27 is distinguishable over Arnold and the cited prior art references.

VIII. CONCLUSION

Appellants respectfully request that the Board enter a decision overturning the Examiner's rejection of the pending claims, and holding that the claims are neither anticipated nor rendered obvious by Arnold.

Respectfully submitted,

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Dated: April 4, 2005

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IX. CLAIMS APPENDIX

The claims of the present application which are involved in this appeal are as follows:

1-22. (Cancelled)

23. (Previously Presented) A graphical user interface (GUI) of a player/recorder system comprising:

a first display portion including a plurality of control boxes each corresponding to one or more of a plurality of player tracks associated with at least one audio processing module;

a second display portion displayed concurrently with the first display portion, the second display portion including a central control mechanism for substantially simultaneously controlling all of the plurality of tracks of the at least one audio processing module; and

a third display portion displayed concurrently with the first display portion and the second display portion to produce the GUI, the third display portion including a plurality of recorder control boxes each adapted to control one or more of a plurality of recorder tracks associated with the at least one audio processing module.

24. (Previously Presented) The GUI of Claim 23, wherein each of the plurality of control boxes including at least one selection button that, when selected, performs a predetermined function on two or more of the plurality of tracks concurrently.

25. (Previously Presented) The GUI of Claim 23, wherein the third display portion comprises a record button for each specific track of the plurality of recorder tracks and wherein the record button is selectable to transmit a record command to an audio processing module having the specific track to cause the specific track to record an audio sound.

26. (Previously Presented) The GUI of Claim 23, wherein the central control mechanism is selectable to transmit a global control command associated with the central

control mechanism to the at least one audio processing module to perform a function assigned to the global control command.

27. (Previously Presented) The GUI of Claim 23, wherein the first display portion further comprises a scroll bar that provides access to the plurality of control boxes that are loaded into the player/recorder system but are not visible on a screen displaying the GUI .

28. (Previously Presented) The GUI of Claim 24, wherein the selection button mutes at least two player tracks of the plurality of player tracks after the plurality of player tracks start playing.

29. (Previously Presented) The GUI of Claim 23, wherein the second display portion includes a global stop button to control the tracks of the at least one audio processing module.

30. (Cancelled)

31. (Cancelled)

32. (Previously Presented) In a player/recorder system having a plurality of audio processing modules each having one or more tracks and each connected to a computer system having a processor and a display, a graphical user interface method of centrally controlling each of the one or more tracks of the plurality of audio processing modules, the method comprising:

generating a first display portion on the display by the processor, the first display portion including a plurality of player control boxes each adapted to control at least one player track of an audio processing module of the plurality of audio processing modules;

generating a second display portion on the display by the processor, the second display portion including a central control mechanism for simultaneously controlling all of the plurality of tracks of each of the plurality of audio processing modules; and

generating a third display portion on the display concurrently with the first display portion and the second display portion, the third display portion including a plurality of

recorder control boxes each adapted to control at least one recorder track of an audio processing module of the plurality of audio processing modules.

33. (Previously Presented) The method of Claim 32, further comprising:

selecting one of the player control boxes corresponding to one of the plurality of player tracks;

transmitting a control command associated with the one of the player control boxes from the computer system to a determined audio processing module having the one of the tracks; and

performing a function assigned to the control command at the determined audio processing module.

34. (Previously Presented) The method of Claim 32, further comprising:

selecting a record button of a specific recorder track of the at least one recorder tracks;

transmitting a record command from the computer system to an audio processing module having the specific recorder track; and

causing the specific recorder track to record an audio sound by the audio processing module.

35. (Original) The method of Claim 32 further comprising:

selecting the central control mechanism;

transmitting a global control command associated with the central control mechanism from the computer system to the plurality of audio processing modules; and

each audio processing module, performing a function assigned to the global control command by the audio processing module.

36. (Original) The method of Claim 32 wherein the central control mechanism comprises a global play command for simultaneously controlling all of the loaded player tracks of the plurality of tracks of the audio processing modules and wherein the method further comprises:

selecting the global play command;

transmitting the global play command from the computer system to the plurality of audio processing modules; and

each audio processing module, causing all the loaded player tracks to each play an audio sound.

37. (Original) The method of Claim 32, wherein the central control mechanism comprises a global stop command for simultaneously controlling all of the loaded tracks of the plurality of audio tracks of the audio processing modules and wherein the method further comprises:

selecting the global stop command;

transmitting the global stop command from the computer system to the plurality of audio processing modules; and

each audio processing module, causing all the loaded tracks to each stop any play or record activity.

38. (Original) The method of Claim 33:

wherein each audio processing modules has one or more input/output ("I/O") channels each connected to the computer system;

wherein the control boxes control a corresponding one or more I/O channels of the plurality of audio processing modules;

wherein transmitting the control command comprises transmitting the control command from the computer system to the audio processing module having the I/O channel corresponding to the specified control box; and

wherein performing a function comprises performing a task assigned to the control command by the audio processing module with respect to the I/O channel.

39. (Original) The method of Claim 35:

wherein each audio processing module has one or more input/output ("I/O") channels each connected to the computer system;

wherein the central control mechanism controls all of the one or more I/O channels of the plurality of audio processing modules;

wherein transmitting the global command comprises global control command associated with the central control mechanism from the computer system to the plurality of audio processing modules; and

wherein performing a function comprises performing a task assigned to the global command by each audio processing module with respect to all of the I/O channels.

40-46. (Cancelled)

47. (Previously Presented) A machine-readable medium having stored thereon data representing instructions which, when executed by a machine, cause the machine to perform operations comprising:

generating a first display portion on a display of a player/recorder system, the first display portion including a plurality of control boxes to control a corresponding one or more of a plurality of player tracks of each of a plurality of audio processing modules;

generating a second display portion on the display, the second display portion including a central control mechanism for simultaneously controlling all of the plurality of tracks of each of the plurality of audio processing modules; and

generating a third display portion displayed concurrently with the first display portion on the display, the third display portion including a plurality of recorder control boxes each to control a corresponding one or more of a plurality of recorder tracks of each of the plurality of audio processing modules.

48. (Original) The medium of Claim 47, wherein the instructions further comprise instructions which, when executed by the machine, cause the machine to perform further operations comprising:

receiving a selection of one of the control boxes corresponding to one of the tracks; and

transmitting a control command associated with the one of the control boxes to an audio processing module having the one of the tracks.

49. (Original) The medium of Claim 47, wherein the instructions further comprise instructions which, when executed by the machine, cause the machine to perform further operations comprising:

receiving a selection of the central control mechanism; and

transmitting a global control command associated with the central control mechanism to the plurality of audio processing modules.